REMARKS

Claims 1-40 are in the application. Claims 41-47 have been canceled as directed to non-elected subject matter. No claim is allowed.

Claims 1-7, 14,15, 18-27, 34,35 and 38-40 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Franklin et al. ('352) in view of Webber (WO98/34167). This rejection is respectfully traversed.

Claims 1-4 and 21-23

Franklin is directed to a system and method for solving the problem of the consumer's inability to create one electronic shopping basket for items from many websites of many suppliers. In absence of Franklin's invention, the electronic shopper can store shopping basket product information only on the server side, that is, only on the particular merchant's website. If the consumer wants to create a shopping basket for another merchant's website he/she must enter that merchant's website and create a second shopping basket. Webber allows the creation of one computer-based shopping system usable on a personal computer to serve as a shopping basket for products from many websites. The important distinction of Franklin is that the system does not change the way commerce is conducted on the Internet, that is, the point of sale from the consumer is still at the particular merchant's website with the particular merchant.

Franklin thus discloses a system for an existing consumer to selectively gather and store information from an existing merchant in a network environment, comprising a shopping basket to gather and store product information, a wallet in which sources of payment can be stored, and an address book in which shipping addresses can be stored, all on the existing consumer's computer. At column 10, lines 10-17 it is stated:

FIG. 2 illustrates communication between a consumer computer 102 and a merchant computer 202. A consumer accesses a merchant computer 202 on the Internet 204 via a consumer computer 102. The consumer computer 102 includes a standard Web browser 120, and the merchant computer 202 includes a Web server 128. The Web browser 120 and the Web server 128 use the HTTP protocol to communicate with each other over the Internet.

In the office action the examiner recognizes that Franklin does not teach an order flow controller to selectively route consumer product orders for one or more

8

products of a given supplier to the given supplier or to one or more retailers identified by the given supplier in accordance with the specified fulfillment policies of the given supplier. In the claims, the term "selected" has been amended to "specified" to clarify that it is the supplier that specifies the fulfillment policies and that the selection of policies is not made by the buyer. This is supported at page 4, lines 1-2.

The examiner thus relies upon Webber as allegedly showing an order flow controller that performs such a task.

To clarify the differences between Franklin and the present invention, according to the present invention the consumer works on a graphical consumer interface that displays the product information for products from the participating suppliers and receives the orders there. The point of sale to the consumer is with the supplier. If the supplier chooses, in accordance with its individual fulfillment policy for the order, the supplier may allow the order to be viewed and fulfilled by retailers that the supplier selects. The difference between the conventional consumer-website merchant point of sale and applicants' consumer-supplier point of sale methodology is significant. Under the present system used on the Internet, if a supplier has its own website, it is in competition with all of its retailers who may also have websites. Therefore the supplier is in competition with its own retailers on the Internet. Ignoring for the moment that this may be in violation of supplier-retailer distribution agreements, assume a supplier, not having the retailer's overhead, will be able to offer better prices than its retailers. The supplier could eventually cannibalize its retailers, that is, drive its retailers out of business or detract significantly from its retailer's business. Franklin does not address this problem of allowing the supplier to participate on the Internet with its retailers, without violating any supplier-retailer distribution agreements or cannibalizing its retailers. The problem which applicants' system solves, still exists in Franklin's system. Franklin's system is merely a convenience item for the individual shopper in order to have the ability to manipulate his/her own personal shopping cart on his personal computer.

Webber does not solve this problem. Webber's system is a way of avoiding written record keeping of sales and fulfillment of those sales by the seller. Referring to Webber's FIG. 2, the point of sale is still between the customer 251 and the specific merchant 241, A-G. The fulfillment of the order is determined by the respective Internet merchants 241, A-G. While there are supply chain enterprises 277 downstream, the suppliers are merely fulfillment entities and do not participate

9

directly on the Internet for the customer's business. To put it in a simplified way, in Webber's FIG. 2 the supply chain enterprises 277 cannot directly deal with the customer 251. Moreover, the supply chain enterprises 277 have no say as to which retailer fulfills the order. Webber does not solve the problem of allowing the supply chain enterprise to participate on the Internet directly with the customer 251.

Webber's system for distributing products is in essence; 1) a reverse auction where the buyer submits an offer to purchase an item - the offer includes terms, conditions and fulfillment *as specified by the buyer* – the middleman submits the offer to a pool of suppliers – one of the suppliers can selectively choose to accept the terms and conditions, and fulfill the order. Alternatively, Webber's system serves as 2) an electronic ordering system for just-in-time fulfillment for an online merchant and in that case the merchant is the buyer without a consumer, a business to business or; 3) a ratified contract at the POS (point of sale) between two or more parties.

In accordance with applicants' system, the consumer sends his/her order to the supplier. One or more retailers may also receive the order, but that is dictated by the supplier in accordance with the supplier's specified fulfillment policies. The retailers may or may not receive the order, but it is the choice of the supplier, not the consumer or the retailer.

For the foregoing reasons, it is submitted that the present claims are unobvious over the combination of Franklin and Webber and withdrawal of the rejection is respectfully requested.

Claims 5-7

In view of the distinctions discussed above in connection with claims 1-4, the back room manager of Franklin does not remedy the deficiencies of the primary references. Accordingly these claims are unobvious over the cited references.

Claims 14-15

In view of the distinctions discussed above in connection with claims 1-2, the price filter of Webber does not remedy the deficiencies of the primary references. Accordingly these claims are unobvious over the cited references.

Claims 18-20

In view of the distinctions discussed above in connection with claims 1-2, the escrow account manager of Webber does not remedy the deficiencies of the primary references. Accordingly these claims are unobvious over the cited references.

<u>Claims 24-27</u>

In view of the distinctions discussed above in connection with claims 21-22, the order list of Webber does not remedy the deficiencies of the primary references. Accordingly these claims are unobvious over the cited references.

<u>Claims 34, 35 and 38-40</u>

In view of the distinctions discussed above in connection with claims 21-22, these claims are unobvious over the cited references.

Claims 8, 9, 28 and 29 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Franklin in view of Webber and further in view of Johnson et al. ('516).

The Examiner relies on Johnson to disclose an electronic sourcing system maintaining a catalog of product information. The system allegedly checks for availability of selected items, generates purchase orders and includes a consumer interface configured to display price and availability of products by each supplier by product category. The system is thus configured to enable a consumer to search through products of a given category by supplier. Applicants respectfully traverse this rejection.

<u>Claims 8, 9, 28, 29</u>

Johnson does not remedy the deficiencies previously discussed above with respect to Webber and Franklin as applied to claims 1, 2, 21 and 22. It appears that Johnson is directed to a search engine for selecting items from a catalog that generates a purchase order for the desired item from inventory locations. The supplier does not determine who fulfills the order (that is, whether it be the supplier itself, or a retailer selected by the supplier). The point of sale is at the catalogue item on the database, selected by the retailer, not by the supplier. Therefore, it is submitted that the claims are unobvious over the combination of Webber, Franklin and Johnson and withdrawal of the rejection is respectfully requested.

Claims 10-13 and 30-33 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Franklin in view of Webber, further in view of Knowlton ('057). This rejection is respectfully traversed.

<u>Claims 10-13 and 30-33</u>

Knowlton is relied upon to show an apparatus and method for creating and distributing graphical user interfaces configured to enable a consumer to display

selected product representation in a scratch pad window. However, Knowlton does not remedy the deficiencies of Webber as discussed above as applied to claims 1,2, 21 and 22. Accordingly, it is submitted that claims 10-13 and 30-33 are unobvious over the cited combination of references and withdrawal of the rejection is respectfully requested.

Claims 16, 17, 36 and 37 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Franklin in view of Webber, further in view of Allsop ('472). This rejection is respectively traversed.

The deficiencies of Franklin and Webber as applied to claims 1, 2, 21 and 22, from which these rejected claims ultimately depend, have been discussed above and are incorporated herein.

Allsop is relied upon by the examiner to disclose a system whereby electronic commerce is performed with links from manufacturers to authorized dealers with custom order interfaces, including a price filter. Suppliers (manufacturers) can transmit retail information, including payment information from authorized dealers. Transmission of retail information about payment is not relevant to determining who has the opportunity to fulfill a particular order. It is not seen how Allsop therefore remedies or is even relevant to the combination of Franklin and Webber as applied by the examiner. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Accordingly, it is submitted that the application is in condition for allowance.

If prosecution of this application can be assisted by telephone, the Examiner is requested to call Applicants' undersigned attorney at (510) 663-1100.

Please apply any other charges or credits to deposit account number 50-388 (Order No. BDGOP001X1).

Dated: *November 9, 2006*

Respectfully submitted,
BEYER WEAVER & THOMAS, LLP
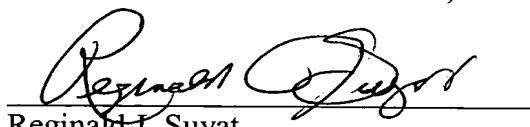
Reginald J. Suyat
Reg. No. 28,172

P.O. Box 70250
Oakland, CA 94612-0250

12